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09/12/2005 09:22 PM To  
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cc

bcc

Subject: Comments to Docket# OAR-2004-0094

Please find attached comments on the above-referenced proposed rule.  
Please contact me should you have any questions. These comments also have  
been filed on regulations.gov. Thank you.

Sincerely,

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September 12, 2005

U.S. Environmental Protection Agency  
EPA West (Air Docket)  
1200 Pennsylvania Avenue, NW  
Room: B108, Mail Code: 6102T  
Washington, DC 20460  
Attn: E-Docket ID No. OAR-2004-0094

**Re: National Emission Standards for Hazardous Air Pollutants; General Provisions, 70 Fed. Reg. 43992, Docket ID No. OAR-2004-0094**

Dear Sir or Madam:

On behalf of the members of the Rubber Manufacturers Association (RMA), I am pleased to offer these comments on the above-referenced “notice of reconsideration of final rule, proposed amendments, and request for comment” (July 29 Proposal). RMA is the national trade association for the rubber products industry and represents a \$80 billion domestic manufacturing sector.<sup>1</sup> RMA represents the rubber industry in a variety of fora, including regulatory proceedings, legislative issues, and technical and standards development.

The July 29 Proposal would amend the startup, shutdown, malfunction (SSM) provisions in Clean Air Act (CAA) §112 “General Provisions” (found at 40 CFR part 63, subpart A<sup>2</sup>). In addition, it would amend the rubber tire maximum achievable control technology (MACT) standard regulations codified at part 63, subpart XXXX. RMA members that manufacture tires must comply with these standards.

RMA was active in working with the U.S. Environmental Protection Agency (EPA) in the development of the tire MACT standards. In our January 25, 2001 comments on the tire MACT proposal, we expressed our concern that the SSM sections of EPA’s §112 General Provisions did not apply to the tire manufacturing MACT. EPA subsequently corrected this omission in the final rule by stating that the various

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<sup>1</sup> RMA members manufacture tires, belts, hoses, seals, gaskets, and molded rubber products for industrial, automotive and consumer applications. RMA’s membership includes all of the country’s major tire manufacturers: Bridgestone Americas Holding, L.L.C., Continental Tire N.A., Inc., Cooper Tire & Rubber Company, The Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, and Yokohama Tire Corporation. RMA members also include nearly 100 manufacturers and suppliers to the engineered rubber products industry.

<sup>2</sup> Unless otherwise specified, all regulatory references in these comments are to 40 CFR.

provisions of §63.6(e) apply to tire manufacturers – at least to those who employ control technology to comply with the MACT standards. 67 Fed. Reg. 45588, 45622, Table 17 (July 9, 2002). RMA continues to be concerned about the SSM provisions in the General Provisions and the subpart XXXX tire MACT standards because our members use control technology to meet certain requirements of the standards.

As is explained in more detail below, RMA supports EPA's proposal to amend the tire MACT standard language so as not to require facilities to implement their SSM plans when an SSM event occurs. In addition, while a facility's compliance with a hastily-draft, poor SSM plan should not provide a "safe harbor" from a noncompliance finding, EPA can clarify that the carrying out of an SSM plan written in good faith would provide such a safe harbor. Finally, we concur with EPA that the CAA does not require, and EPA's rules should not mandate, that EPA or a permitting authority obtain an SSM plan from a facility upon the request of a member of the public.

### **Requirements During an SSM Event**

EPA is correct in stating that "[e]stablishing the specific procedures in SSM plans as applicable requirements may unnecessarily constrain a source during a period where unanticipated events call for maximum flexibility" (p. 43993, col. 3). As the July 29 proposal points out, the appropriate requirement during a period of SSM is a general duty to minimize emissions consistent with safety and good air pollution control practices (*id.* at col. 2). Thus, EPA is right to say that the elements of an SSM plan are not "applicable requirements" and therefore a decision not to implement the plan during an SSM event does not by itself amount to a CAA violation.

The proposed amendment to §63.5990(d) of the tire MACT standards, which applies to affected sources meeting emission limits by using a control device, would eliminate the words "and implement" from the subsection. As a result, facilities would need to "develop" a written SSM plan according to the provisions of §63.6(e)(3), rather than "develop and implement" such a plan. July 29 Proposal at 44006, col. 1. We support this change, but question why a facility would still need to immediately file an SSM report if the facility did not follow its plan during an SSM event. See 2. of Table 15 to subpart XXXX. Given EPA's recognition that in the moment it may not make sense to follow the measures specified in the SSM plan, we think including the notification in the facility's semiannual or annual report – as is the case where an action is consistent with the SSM plan – would be sufficient. See 1.c. of Table 15 to subpart XXXX for the periodic reporting requirement when a facility acts consistent with its SSM plan.

### **Effect of Complying With an SSM Plan**

The July 29 Proposal states that following the SSM plan during an SSM event "is no 'safe harbor' for sources if the plan is found to be deficient. That is, a source could not use 'following the plan' as a defense for an inadequate program to minimize emissions" (p. 43994, col. 1). We agree that following an obviously faulty SSM plan cannot serve as a "shield" from enforcement. But while (as described in the preceding section), it is not appropriate to require compliance with an SSM plan, following such a

plan *should* provide a safe harbor *if* it is not obviously deficient. In other words, a plan designed and written in good faith after careful consideration serves as a useful guide for the facility, and for enforcement purposes EPA and state agencies should not engage in post-hoc analysis of whether the plan covered every conceivable event adequately. If the intent of a reasonable plan was to minimize emissions during an SSM event, and the facility followed the plan, then no enforcement action should be brought even if emissions were not in fact minimized. The appropriate remedy in this case would be to have the facility amend its SSM plan to address the newly-discovered circumstances.

### **Availability of SSM Plans**

We agree with EPA's conclusion that "the CAA does not require EPA or a permitting authority to obtain SSM plans at the request of the public. Nor does the CAA provide EPA with authority to impose such a requirement on permitting authorities" (p. 43995, col. 1).

In addition, such a requirement would amount to bad policy. SSM plans of tire manufacturers describe the internal operations of plants that must compete in the marketplace. As result, the plans may contain confidential and sensitive information. Even if the CAA provided authority to give a member of the public the right to obtain an SSM plan, providing such a right would allow companies to obtain sensitive information from their competitors. To protect themselves from this type of unacceptable outcome, many facilities no doubt would write overly vague SSM plans and omit critical information. That, in turn, would make the SSM plans much less useful to plant personnel, and the result could be poorer engineering and environmental performance during an SSM event. It would make no sense to write the rules in a way that could lead to this result. RMA therefore supports EPA's proposal to remove the provision in §63.6(e)(3)(v) that requires a permitting authority to obtain an SSM plan under certain conditions.

Again, we appreciate the opportunity to file the comments. If you have any questions, please feel free to call me at (202) 682-4839.

Sincerely,



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Vice President  
Environment & Resource Recovery

Cc: Rick Colyer, OAQPS